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SENSITIVE
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STATE PASS USTR FOR EVERETT EISSENSTAT, KATE KALUTKIEWICZ
STATE FOR WHA AND EEB

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¶1. (SBU) SUMMARY: The relationship between the United States and Brazil is productive and broad-based, with growing economic and trade ties. The visit provides an important opportunity to highlight the potential for increased bilateral cooperation, emphasizing that specific trade disputes need not define our overall positive relationship. While disputes including cotton must be managed, excellent opportunities for increased bilateral trade and investment cooperation exist. Private sector interlocutors in Sao Paulo will be eager to explore possible scenarios to resolve the cotton dispute, will lobby for GSP renewal, and may raise the GOB-proposed legislation that would provide a significant government role in development of potentially vast new off-shore oil resources. Your trip to Recife provides an opportunity to discuss the importance of intellectual property rights and an enabling environment to foster innovation, particularly in a region that has traditionally lagged behind other areas in Brazil. END SUMMARY.

POLITICAL OVERVIEW

¶2. (SBU) With democracy re-established in 1988 after decades of military dictatorship, Brazil's democratic institutions are generally strong and stable. President Luiz Inacio "Lula" da Silva remains a popular president -- one of the most popular in Brazil's history and indeed in the world today, with recent approval ratings still as high as 75 percent nearly seven years into his presidency. This sustained popularity is based on a combination of his personal connection with the country's lower classes, orthodox economic policies, and expanded social programs. Ongoing public scandals involving the leadership of the Senate and various members of Congress have further eroded the legislature's power vis-a-vis the executive and its ratings among the Brazilian public. The court system remains cumbersome and unreliable, but has recently taken limited steps to curb impunity among public officials, which have been well received by a public accustomed to abuses by authorities. The Brazilian political elite and media are already focused on the October 2010 national elections for president, governors of all 26 states and the federal district, two-thirds of the senate, and all federal deputies. Lula is constitutionally barred from seeking a third term and has designated Civil Household Minister (Prime Minister-equivalent) Dilma Rousseff as his party's candidate to succeed him. At this point, Rousseff is a distant second in the polls to likely opposition candidate Sao Paulo Governor Jose Serra, but with almost a year to go, the race remains unpredictable.

¶3. (SBU) The United States and Brazil share the basic goals of fostering hemispheric stability and integration, promoting democracy and human rights, and preventing transnational illicit activity. The attainment of a permanent seat on the UN Security Council has been a central goal of Brazil's foreign policy under President Lula's government. Regionally, Lula has maintained Brazil's historic focus on stability, seeing good relations with all parties as the best way to achieve this goal. As a result, Brazil maintains

an active dialogue with Venezuela and Cuba, has worked to foster good relations with Bolivia and Ecuador, and has stood firmly on the principle of respect for sovereignty in the region. In line with Lula's demonstrated interest in Brazil playing a larger role in global issues, as well as expanding Brazil's commercial ties, Lula hosted separate visits from Iranian President Ahmadinejad, Israeli President Peres, and Palestinian President Abbas, among others, in November.

ECONOMIC OVERVIEW

¶4. (SBU) Brazil is the ninth largest economy in the world and holds investment grade status from the major rating entities. Annual Gross Domestic Product (GDP) grew 5.1 percent in 2008, and inflation was 5.8 percent. The global economic crisis eroded previous predictions for annual GDP growth for 2009 from four per cent to essentially flat or slightly negative. Despite this decline in immediate prospects, Brazil has thus far weathered the crisis better than most major economies and has recently shown signs of a recovery, led by strong domestic demand. Conservative macroeconomic policies in the years prior to the crisis, and targeted responses during the crisis -- including credit injections in the financial system and tax cuts on automobiles and consumer durables -- played a role in lessening the impact of the global crisis on Brazil.

¶5. (SBU) Brazil's relatively successful management of the crisis has encouraged the GOB to engage proactively and constructively in the debate over how to handle the economic crisis including through the G20 process. Brazil has called for increased regulation of the global financial system, increased global access to trade finance, and an expanded voice and vote for large emerging countries like

Brazil in the International Financial Institutions.

¶6. (SBU) Brazil is a major producer and exporter. Agriculture makes up 36 percent of exports, and the agribusiness sector accounts for 25 percent of Brazil's GDP. Brazil is a leading exporter of soybeans, beef, sugar, coffee, and orange juice. Brazil also distinguishes itself as a major exporter of civilian aircraft, steel, and petrochemicals. The United States is Brazil's top trading partner overall, although in March China became Brazil's primary export destination. Prior to the current financial crisis, U.S.-Brazil trade experienced significant annual growth, surpassing USD 60 billion in 2008.Brazil typically experiences a slight positive balance in the trade relationship.

BCM AGENDA TOPICS

TRADE AND INVESTMENT FRAMEWORK AGREEMENT (TIFA)
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¶7. (SBU) The GOB, including the Ministry of External Relations (MRE), the Ministry of Development, Industry and Trade (MDIC), and the External Trade Chamber (CAMEX) Secretariat, has indicated interest in exploring ways to deepen bilateral trade cooperation with the United States. There is a great deal of GOB interest in implementing the CEO Forum recommendation to pursue a TIFA with the United States - albeit by another name, given negative connotations associated the word "tifo" (typhoid) in Portuguese. While tariff negotiations could only occur in 4+1 format with Brazil's Mercosul partners, Embassy interlocutors agree there is scope for bilateral cooperation, with the potential to expand eventually to 4+1 cooperation if there is mutual interest (NOTE: given recent forward movement in the Brazilian Congress on Venezuela's Mercosul membership application, you may wish to ask your interlocutors how Venezuela's potential membership in Mercosul will affect cooperation among the four existing members and potential third country partners. END NOTE). In areas of joint interest, Brazil and the United States could potentially make common cause in approaches to third countries. Some in the Brazilian trade associations (Sao Paulo-based FIESP and its umbrella association CNI) have indicated interest in more strategic bilateral engagement. Possible areas to

explore with the GOB or that may be raised in your Sao Paulo private sector discussions include:

BILATERAL INVESTMENT TREATY (BIT)

¶8. (SBU) With respect to investment, the USG and the Brazilian government have had productive consultations on BIT elements, although Brazil is still cautious about negotiating BITs given historical congressional opposition. CNI has traditionally been cautious about BITs, seeing them as a constraint on industrial policy, but has recently begun re-examining this position as Brazil's overseas FDI increases. MRE plans a side session on the margins of the December 14 EPD to further discuss investment agreement elements.

TRADE FACILITATION

¶9. (SBU) GOB and Brazilian industry have provided significant feedback that intensified cooperation on trade facilitation would be welcome. USDOC and CAMEX have sponsored two week-long trips this year for GOB agencies to learn how customs clearance and inter-agency coordination works in the United States. Other activities include seminars held by CBP in Brazil for Brazilian Customs and the Federal Police, and a Commercial Dialogue Trade Facilitation meeting which was held in Manaus in November. The CEO Forum has also prioritized trade facilitation. There is some sensitivity regarding the CBP Trade Facilitation and Supply Chain Security Program within MRE. While CAMEX, MDIC and the trade promotion department within MRE support and welcome the program, the MRE transnational crimes office is not familiar with the program and would benefit from a briefing explaining the advantages to Brazil in participating. MRE has also requested to add this topic to the December 14 U.S.-Brazil Economic Partnership Dialogue agenda in Washington.

WTO COTTON DECISION

¶10. (SBU) On November 11, the Brazilian External Trade Chamber (CAMEX) published for public comment a list of goods that could potentially be subject to increased tariffs (100 percentage points) as part of Brazil's retaliation against U.S. cotton subsidies. CAMEX accepted public feedback on the list until November 30 and is

expected to present a refined list to CAMEX ministers by mid-December. If approved, the increased tariffs could take effect as early as January, 2010.

¶11. (SBU) Press reports indicate that CAMEX has also prepared a draft law on cross-retaliation against U.S. intellectual property and submitted it to the Office of the Presidency (Casa Civil) for analysis. The draft reportedly proposes to tax IP royalties and to withdraw IP rights. The Casa Civil can decide to send the draft law to Congress as a provisional measure (which would give it procedural precedence over other agenda items), a new draft law, or as a substitute for an existing draft law on cross-retaliation (sponsored by Deputy Paulo Teixeira). Whether MRE would actually invoke cross-retaliation remains an open question. While MRE sees the threat of cross-retaliation as a potential tool to encourage US compliance with the cotton decision, the Ministry is aware of potential repercussions on the Brazilian investment climate were it actually to revoke or tax IPR. Mission has no indication that GOB is considering cross-retaliation on services at this time.

¶12. (SBU) Brazilian business groups have stated opposition to cross-retaliation. Business contacts have encouraged focus on compensation rather than retaliation, and if necessary prefer retaliation to focus on goods. Some have also suggested increased U.S. trade assistance in third countries, such as low-income African nations, as an offset to increased Brazilian tariffs. Mission understands that CNI and the US Chamber are working to develop joint Brazil-United States Business Council (BUSBC) recommendations to resolve the cotton dispute, with a hope to finalize their proposal

by the December 4 BUSBC Plenary in Washington.

DOHA ROUND

¶13. (SBU) Brazil has been a significant voice in the WTO's Doha Round negotiations and concluding Doha remains a high priority for Brazil. However, Brazil has been clear that while it is interested to hear what specific access USG seeks, it is reluctant to engage in bilateral negotiations on scheduling. Foreign Minister Amorim has criticized the United States for "greed" in the negotiations and called for, on behalf of developing countries, a new negotiating meeting in March. GOB, reflecting FIESP/CNI industry positions, has been resistant to WTO sectorals, including electronics or chemicals. Amorim's public rhetoric puts responsibility for progress on the Doha Round on the USG's shoulders.

GSP

¶14. (U) Private sector representatives at your Sao Paulo AmCham event or business roundtable at the Sao Paulo Federation of Industries (FIESP) may raise this issue. Industry keeps a close eye on developments in the U.S. Congress on GSP renewal, and strongly advocates remaining in the GSP program. MRE will press for continued inclusion in GSP, arguing the program benefits US producers and disadvantaged suppliers in the Northeast of Brazil.

STANDARDS AND SPS MEASURES

--Beef and Pork Regulations:

¶15. (SBU) Brazil prohibits imports of live cattle, beef, and beef products from the United States and has proposed new regulations that are more restrictive than international guidelines for safe trade in such products, particularly with respect to Bovine Spongiform Encephalopathy (BSE). In October 2008, Brazil notified to the WTO a draft regulation (G/SPS/N/BRA/483) tat establishes its sanitary requirements for importation of ruminants and ruminant products from cuntries affected by BSE. Brazil's draft regulatio exceeds World Organization for Animal Health (OE) guidelines for trade of these products from cntrolled-risk countries, such as the United States. The USDA Animal and Plant Health Inspection Serice (APHIS) presented technical comments to Brazl's draft regulation requesting Brazil's MAPA relign its import regulation with OIE guidelines. During September 2008 bilateral technical discussions, USDA-APHIS responded to a MAPA risk assessmen questionnaire on the U.S. control and surveillace system for BSE. To date, there has been no ation by Brazil's MAPA to move forward on this issu.

¶16. (SBU) Brazil restricts imports of pork and pork products from the United States due to reqirements for Trichinosis. USDA-APHIS received nw requirements for imports of these products from APA. USDA-APHIS has established a voluntary certfication program for Trichinosis and presented a certification proposal to MAPA in May
¶2009. MAPArejected the USDA proposal in October 2009. MAPA s currently insisting on testing and will not alow for certification

or treatment.

¶17. (SBU) At the same time, MRE will press USTR for forward movement in the APHIS rule-making process for access for pork from the State of Santa Catarina as well as overall progress in the APHIS assessment of Brazil for foot and mouth disease.

-- Medical Devices:

¶18. (SBU) In late 2006, Brazil adopted a regulation (Resolution 185) which requires companies to submit economic information (some of it proprietary), including projected worldwide pricing intentions, in order to register and re-register certain medical devices. Registration is a requirement for these products to be placed on the Brazilian market. The United States continues to express its concern that Brazil's National Health Surveillance

Agency (ANVISA) requires the submission of certain economic data with each registration that does not appear to be related to the safety and efficacy of medical devices and is unnecessarily costly and burdensome. U.S. industry has indicated that it would be very challenging to comply since some of the information required by ANVISA either does not exist, is sensitive commercial information, or is only available if obtained from other companies, which raises potential antitrust issues. Brazil and the United States are currently engaged in discussions aimed at resolving the issue.

¶19. (SBU) ANVISA's Resolution 25, implemented on May 18, 2009 requires ANVISA inspections of facilities that produce certain "high risk" medical devices to be sold in the Brazilian market. Industry alleges that ANVISA does not have sufficient resources to inspect all overseas facilities by the May 22, 2010 deadline, and that failure to do so by the deadline could lead to the disruption of hundreds of millions of dollars in trade. Brazil and the United States are coordinating meetings with the private sector to address their concerns about the implementation of the regulation. On November 4, ANVISA chaired a seminar with members of the medical device industry to discuss the regulation. ANVISA committed to publish a technical note clarifying the regulation and answering industry-submitted questions and also to post instructions on their website regarding how to request an inspection appointment. In the last week of November, ANVISA did publish a technical note with clarifications of some definitions and procedures, but has not yet published answers to specific industry-submitted questions.

--Toys

¶20. (SBU) In late 2007, U.S. industry reported that toy exports to Brazil were being affected by a new Brazilian measure requiring certification and testing of toys. On October 16, 2007, Brazil notified the WTO TBT Committee of additional requirements for toxicological test methods for toys marketed in Brazil. Industry argued that the regulation discriminated against imports in requiring testing by lots in Brazil, noting that the additional costs for importers were projected at 8-12 percent of the toy's unit costs and $30-50 million for toy importers annually, with the possibility of those figures running much higher. After extensive USG advocacy efforts, on November 5, 2009, Brazil notified to the WTO the final toy regulation which included many recommendations suggested by U.S. industry. The discriminatory provisions have been removed and testing by ILAC accredited labs will be allowed. Industry has also requested a transition period to comply with the new rules. Post is consulting with industry to see if any clarification is needed from the Brazilian National Institute of Metrology, Standardization, and Industrial Quality (INMETRO) regarding the final regulation.

--Standards Cooperation

¶21. (SBU) On November 20 at the Joint Commission Meeting on Science and Technology, the U.S. National Institute for Standards and Technology and INMETRO signed a Memorandum of Understanding (MOU) for physics, chemistry, and standards cooperation. A similar MOU between the two organizations expired in 2007.

TRADE AND ENVIRONMENT

¶22. (SBU) On November 13, the GOB unveiled its position for the Conference of the Parties-15 (COP-15) to the UN Framework Convention on Climate Change (UNFCCC) in Copenhagen. The GOB has announced that it will seek to reduce its economy-wide greenhouse gas emissions by between 36.1 and 38.9 percent by 2020 compared with projected "business as usual" emissions. This position represents a significant advance over Brazil's previous position that only the developed countries should have emissions reductions targets and the developing ones needed to preserve room for growth. Brazil, however, insists that developed countries provide substantial

technology transfer and financial assistance to developing countries so that they can take mitigation and adaptation measures. Moreover, Brazil has joined with China, India, and South Africa in vigorously

demanding that developed countries agree at Copenhagen not to create trade measures related to climate change. MRE plans to raise its concerns regarding Waxman-Markey legislation provisions that would allow imposition of trade measures. Brazil has opposed efforts to reduce or eliminate tariffs on "green" goods because the list of products in last year's initiative did not include biofuels.

INTELLECTUAL PROPERTY

--Anti-Piracy:

¶23. (SBU) Post has previously reported on the GOB's anti-piracy efforts, which are led by the Ministry of Justice's National Anti-Piracy Council (CNCP). Ref A details the CNCP's current priority projects which include: working with municipal authorities to create legal markets and "cities free of piracy," developing an anti-piracy website, partnering with internet service providers to prevent the online distribution of pirated products, and working with merchants to raise awareness of the negative economic effects of piracy and counterfeiting. CNCP told Econoff on November 19 that the projects are on track to make "significant progress" by the end of 2009.

--Patents and Innovation:

¶24. (SBU) The Brazilian judicial and legislative branches are in the process of examining two key pharmaceutical patent-related issues - the role of the national health vigilance agency (ANVISA) in reviewing pharmaceutical patent applications and the constitutionality of Brazil's pipeline patent system. There has been no resolution of a disagreement between the Brazilian patent office (INPI) and the Inter-Ministerial Intellectual Property Group (GIPI) regarding patents for polymorphs and second uses. In addition, INPI's stated reasoning for a recent patent denial (lack of inventive step) raises potential questions about the treatment of incrementally innovative pharmaceutical patent applications - though underlying political pressure to lower costs for Brazil's AIDS program may have been at work in that case.

¶25. (SBU) Brazilian government officials continue to state that innovation is one of their highest priorities and have indicated interest in cooperation on specific initiatives (ref B). Continuing our bilateral discussions on innovation also provides the USG with an excellent opportunity to highlight the importance of intellectual property rights (IPR) as a pillar of innovation. While some Ministries' officials acknowledge the importance of IPR to innovation, the GOB writ large does not consistently draw a link between IPR and the development and commercialization of new technology and invention (ref C). The GOB's consideration of cross-retaliation on IPR (in the WTO cotton dispute) could be perceived as a lack of commitment to the long-term value of IPR to attracting and promoting innovation as a key element of economic growth. MRE and Casa Civil interlocutors will not eagerly seize on the theme of innovation's ties to IPR protection. However, MDIC and CAMEX are well aware of IPR's importance to economic development and growth, and FIESP has indicated concerns regarding proposals to cross-retaliate on IPR in the cotton case.

--Copyright:

¶26. (U) Brazil is not a party to the World Intellectual Property Organization (WIPO) Copyright Treaty or the WIPO Performances and Phonograms Treaty (collectively the "WIPO Internet Treaties"). The Ministry of Culture has held a series of public debates on amending Brazil's Copyright Law No. 9.610 of 1998. It is expected that such proposed amendments will be publicly released by end of 2009.

¶27. (U) In Recife, you will discuss the concrete impact of intellectual property rights protection and other business climate issues that impact the development of small business, technological innovation, and the overall development of the impoverished Northeast. You will visit the Center for Advanced Studies and Systems (CESAR), which serves as an incubator for technology projects and small businesses including and information and communication technology cluster focusing on software development known as Portodigital. You will also visit the port of Suape facilities encompassing an extensive area for industries and port

services based on the concept of port-industry integration. Several U.S. companies are active in CESAR and Suape.

BIOFUELS

¶28. (SBU) For Brazil, turning ethanol into a world commodity is a key aspect of increasing energy security. Though Brazilian ethanol is produced from sugar cane, Brazil sees expansion of the global ethanol market, regardless of feed stock, as a key interest. In March 2007, the United States and Brazil signed a Memorandum of Understanding (MOU) on biofuels cooperation. As a result, scientists and laboratories from the two countries are collaboratively researching next generation biofuels technologies. The United States and Brazil are also working together in various multilateral fora and the bilateral Commercial Dialogue to develop international biofuels standards and sustainability criteria. By making it easier to treat biofuels as a tradable commodity, these standards should foster the emergence of a vibrant global biofuels market. The U.S.-Brazil Biofuels Steering Group will meet December 15 in Washington.

¶29. (SBU) One irritant in the biofuels relationship is the 54 cents per gallon surcharge/tariff charged to imported biofuels. The Brazilians view the tariff as a measure which supports the corn ethanol industry to the detriment of more efficient sugar ethanol and regularly question why there should be a trade barrier to a clean fuel when there is no such barrier for petroleum. Another issue of concern is the proposed EPA rule making for a renewable fuel standard, which the Brazilians view as a non-tariff trade barrier. The Brazilians contest the modeling that was done to assess the greenhouse gas effects of fuel lifecycles and fear that such assessments could be used to unfairly impede exports of sugar-cane based biofuels from Brazil and the third countries where we are working together to establish domestic ethanol capabilities. In a welcome and well-received outreach effort, the EPA sent a team to Brazil in August to share their modeling methodology and hear the suggestions and concerns of the Brazilians.

PRE-SALT

¶30. (SBU) The discovery in 2007 of potentially massive offshore ("pre-salt") reserves of oil and gas estimated to contain between 30-80 billion barrels of oil equivalent could put Brazil within the top ten oil countries in terms of reserves. Though the discoveries have generated a great deal of excitement, industry observers caution that development will probably be slow in coming due to the expensive technological challenges involved with ultra-deepwater drilling, including a worldwide shortage of equipment such as drilling rigs.

¶31. (SBU) On August 31, the GOB unveiled its long-awaited proposal for a new oil regime to administer its ultra deepwater pre-salt reserves. The proposal, which has been submitted to Congress for consideration, has been somewhat politicized in this pre-election year and will likely undergo significant changes. The proposed legislation would replace the old concessions model and make parastatal Petrobras, with a required minimum of 30 percent participation, the operator on each block, responsible for choosing the contractors, technology, and personnel. It also creates a new government entity known as Petrosal to represent the government to manage the service contracts, and establishes a Social Fund to direct anticipated new oil state revenues against poverty alleviation, education, and scientific and technological innovation. Finally, the legislation provides for up to USD 50 billion to increase Petrobras' capacity to serve its designated role in the pre-salt exploration.

¶32. (SBU) U.S. oil companies operating in Brazil are concerned about the new nationalistic model and warn that it could make their future operations in Brazil commercially non-viable. They are particularly concerned about the potential for Petrobras' designation as sole operator to relegate them to essentially a

financing role, and they cite a high degree of uncertainty regarding the model's potential impact on their investments in Brazil. ExIm Bank has extended a USD 2 billion line of credit to support US equipment and services in development of these reserves.

CITEL MRA AGREEMENT

¶33. (SBU) A U.S./Brazil Mutual Recognition Agreement (MRA) on telecommunications/information technology products has been explored with Brazil's telecommunications regulator ANATEL through direct dialogue, and with Brazil's Ministry of Foreign Relations (MRE) through the U.S./ Brazil Economic Partnership Dialogue (EPD) mechanism. At the EPD in Brazil in 2008, Department of State Assistant Secretary Sullivan reaffirmed USG and industry interest in a U.S./Brazil MRA as a "win-win" for consumers and manufacturers. During the meeting, MRE noted that Brazilian legislation in general requires certification tests to be performed in Brazil but that some exceptions exist for telecommunications/information technology

products. MRE conceded that product coverage of a potential MRA would be limited, but committed to provide a paper detailing what products potentially could be included.

¶34. (SBU) Despite several meetings with ANATEL and MRE since the 2008 EPD to obtain details of the list, to date nothing has been produced. In MRA seminars in the United States and in meetings with U.S. industry, ANATEL officials expressed interest in a U.S./Brazil MRA, but cautioned that the potential transfer of certification responsibilities to U.S. labs could jeopardize the Brazilian priority of preserving and developing Brazilian certification labs. ANATEL offered a limited list proposal to MRE for EPD inclusion that was rejected. ANATEL understands the importance timing plays in introducing IT products to market, yet does not want to pursue this at the expense of Brazilian certification labs. MRE has indicated that there are "no real exports" on the Brazilian side to the United States that would create a win/win scenario and that there is domestic interest in protecting/fostering development of the Brazilian certifying labs. Consequently, any GOB MRA proposal will probably cover only whatever small list of products that are currently allowed, due to complexity/lack of domestic testing facility, to be tested outside Brazil.

COMMENT

¶35. (SBU) With growing economic clout and increasing interest in engaging in global economic issues, Brazil has seen its importance in the region and on the world stage expand significantly. While the government is largely friendly and open to the United States, it does not and will not always see eye to eye with us. Your visit provides an opportunity for the United States to advance key trade and investment interests while once again highlighting the many positive economic and trade ties that unite the United States and Brazil.

KUBISKE